

# **SUPERIOR COURT OF CALIFORNIA**

**County of San Diego**

**DATE: March 29, 2006      DEPT. 71      REPORTER A: Peter Stewart      CSR# 3184**  
**PRESENT HON. RONALD S. PRAGER      REPORTER B:      CSR#**  
**JUDGE**

**CLERK: K. Sandoval**

**BAILIFF: L. Wilks**

**REPORTER'S ADDRESS: P.O. BOX 120128**

**SAN DIEGO, CA 92112-4104**

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JUDICIAL COUNSEL  
COORDINATION PROCEEDINGS  
NO. JCCP 4221  
1,11,111, AND 1V

TITLE [Rule 1550(b)]  
NATURAL GAS CASES

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## **INDEXING**

### **TENTATIVE RULING – CMS ENERGY**

The Motion of Class Defendant CMS Energy Resources Management Co. (CMS) to Compel Third Party Pacific Gas & Electric (PG&E) to provide responses to subpoena is GRANTED.

The parties do not dispute the fact that the requested discovery is relevant.

PG&E primarily objects to the production of the discovery on two grounds (1) privacy of its customers; and (2) its inability to produce the information pursuant to regulations or authority imposed by the CPUC. The Court finds neither issue allow the Court to deny CMS access to the requested information.

Defendants must have an opportunity to conduct discovery on class action issues before they must file opposition to a motion to certify the class. (*Carabini v. Superior Court* (1994) 26 Cal.App.4<sup>th</sup> 239, 244) Here, the non-core class members represent consumers of large amounts of natural gas. These entities are primarily large corporations. As corporations and not private citizens, the corporations do not have an absolute right to privacy protections under the state and federal Constitution. (*Ameri-Medical Corp. v.*

*Workers' Compensation Appeals Bd.* (1996) 42 Cal.App.4<sup>th</sup> 1260, 1287) The right to privacy of the corporations depends on the circumstances of the case. (*Ibid.*)

Here as purported members of a class action, the non-core class members, have put their identities, acquisition, sales and consumption of natural gas at issue. (*Steiny and Cov. V. California Electric Supply Co.* (2000) 79 Cal.App.4<sup>th</sup> 285; *Vinson v. Superior Court of Alameda County* (1987) 43 Cal.3d 833) The information sought is narrowly tailored to the allegations of the complaint, and therefore, CMS is entitled to this discovery. The Court agrees that to the extent that the requested information is sensitive to the non-core class members the information discovered is protected by the confidentiality agreement executed in this action.

PG&E also asserts it is prohibited from disclosing the information because CPUC prohibits the dissemination of the customer information. However, the decisions relied upon by PG&E do not prohibit PG&E from disclosing customer information in every instance. (Hollis-Ross Declaration, Exs. A-B) PG&E may have an internal policy that customer information is absolutely confidential, but even that policy does not preclude the Court from ordering PG&E to produce the information. In any event, both the CPUC and PG&E's internal policy allow for production of customer information pursuant to legal process. Since PG&E was served with a valid subpoena, it may not rely on its own policy to prevent disclosure.

To the extent that PG&E claims the production of information is unduly burdensome, the Court finds PG&E has failed to sustain its burden that this is true.

Finally, although CMS seems to dispute the fact that it intends to subpoena further information from the absent non-core class members, any troublesome subpoenas served on the absent class members may be met with requests for protective orders from Plaintiffs' class counsel.

Thus, the Court grants CMS's motion to compel discovery and orders PG&E to produce the requested information, without further objection, within 10 days of this ruling.

